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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13  
14 UNITED STATES OF AMERICA, ) CR No. 09-0033 WHA  
15 Plaintiff, ) STIPULATION AND  
16 ) [PROPOSED] INTERIM PROTECTIVE  
17 v. ) ORDER  
18 JEFFREY DAVID SCHINKEL, )  
19 Defendant. )  
20 \_\_\_\_\_ )

21 Plaintiff, United States of America, by and through Joseph P. Russoniello, United States  
22 Attorney for the Northern District of California, and Denise Marie Barton, Assistant United  
23 States Attorney for the Northern District of California, and the defendant, Jeffrey David  
24 Schinkel, and his attorneys, Edwin Prather and Craig Bessenger, hereby stipulate and agree as  
25 follows:

26 WHEREAS the defendant is charged in a three count Indictment charging violations of  
27 Title 18, United States Code, section 2252(a)(2) and (a)(4) - Receipt, Distribution, and  
28 Possession of Child Pornography. In connection with this Indictment, the United States is in

STIPULATION AND [PROPOSED] INTERIM PROTECTIVE ORDER,  
CR No. 09-0033 WHA

1 possession of computer media, materials, and property that it alleges constitute and/or contain  
2 images and/or videos of child pornography.

3 WHEREAS pursuant to Title 18, United States Code, section 3509(m), notwithstanding  
4 Fed. R. Crim. P. 16, courts are required to deny defense requests to copy, photograph, duplicate,  
5 or otherwise reproduce any property or material constituting child pornography if the United  
6 States makes the property or material reasonably available to the defendant and provides ample  
7 opportunity for the defense to examine it at a government facility. 18 U.S.C. § 3509(m).

8 WHEREAS in order to comply with Title 18, United States Code, section 3509(m), and  
9 to allow the defendant the greatest opportunity to prepare an effective defense in preparation for  
10 trial in this matter, the United States and defendant agree that disclosure of the alleged  
11 contraband materials on the seized computer media are subject to the following restrictions:

12 **IT IS HEREBY STIPULATED AND AGREED:**

13 1. The provisions of this Interim Protective Order apply to computer media, materials, and  
14 property that the United States alleges constitute and/or contain images and/or videos of child  
15 pornography ("alleged contraband materials"). Without conceding that each image and/or video  
16 within the alleged contraband materials constitutes child pornography, the defendant agrees that  
17 the provisions of this Interim Protective Order apply to the alleged contraband materials. In the  
18 event of a dispute as to whether a specific image and/or video constitutes child pornography, the  
19 defendant agrees that the provisions of this Interim Protective Order apply unless and until the  
20 counsel for the United States agrees in writing that a specific image and/or video is not child  
21 pornography or the Court enters an Order to that effect.

22 2. The following individuals (the "defense team") may obtain and examine the alleged  
23 contraband materials under the conditions set forth herein for the sole purpose of preparing the  
24 defense and for no other purpose:

25 a. Counsel for defendant;  
26 b. Persons employed by defense counsel who are assisting with the preparation of  
27 the defense;  
28 c. Defendant, but only in the presence of his/her attorney;

1           d. Any expert retained on behalf of the defendant to assist in the defense of this  
2           matter;

3           e. Any investigator retained on behalf of defendants to assist in the defense of this  
4           matter.

5        3. The United States shall make one forensic copy of all seized computer media ("defense  
6           hard drive") for the defense team. The defense hard drive will be configured in a format  
7           requested by the defense team, provided that the tools required to configure the hard drive in the  
8           requested format are known to and available to the United States. The defense hard drive shall  
9           be made available in a private room at the offices of the United States Attorney, 450 Golden Gate  
10          Avenue, San Francisco, CA, 94102, or any other location agreed upon by the parties (the  
11          "examination room"). The defense hard drive shall remain in the examination room at all times  
12          and shall not removed from the examination room by any member of the defense team. The  
13          defense team will have access to the examination room during business hours, or on any other  
14          practicable terms that can be agreed upon by the parties, and will be escorted to and from the  
15          room by counsel for the United States or a person designated on his/her behalf. While the  
16          defense team is reviewing the defense hard drive, no agents of the United States will be permitted  
17          inside the examination room, except in the event of a building emergency that requires  
18          immediate access to the examination room.

19        4. The examination room will have land-line phone access and a computer workstation that  
20          meets the minimum system requirements for the defense team to view the alleged contraband  
21          materials and/or install software for forensic analysis of the defense hard drive. The computer  
22          workstation provided by the United States shall not be connected to the Internet or to any other  
23          computer network. The defense team will be permitted to bring into the examination room  
24          whatever hardware, software, books, or records it believes necessary to conduct the examination,  
25          including a computer on which it may conduct a forensic analysis of the defense hard drive.  
26        Any computer brought in by the defense team and used to conduct an examination of the defense  
27          hard drive shall not be connected to the Internet or to any other computer network. The defense  
28          team will also be permitted to bring in and use a computer that provides internet access at its own

1 expense, provided that any computer used to provide access to the internet is not connected to the  
2 computer used to examine the defense hard drive. The defense team will be permitted to leave  
3 the computer work station provided by the United States and /or its own computer processing the  
4 defense hard drive in its absence. While a computer used by the defense team is processing the  
5 defense hard drive in the absence of the defense team, no agents of the United States will be  
6 permitted inside the examination room, except in the event of a building emergency that requires  
7 immediate access to the examination room. At the conclusion of defense team's use of the  
8 examination room, the workstation provided by the United States will be re-imaged. Neither the  
9 United States nor its agents will review the defense team's configurations on the workstation at  
10 any time.

11 5. If agreeable to all parties and practicable, a copy of the defense hard drive may be stored  
12 in a locked or restricted location designated by the United States for subsequent examination by  
13 the defense team, so that the United States will not have to reimage the defense hard drive for  
14 each examination by the defense team. The integrity of this hard drive may be verified by the use  
15 of a container sealed with tamper-evident evidence tape. When the defense team has advised  
16 counsel for the United States that it has completed its examination of the defense hard drive, the  
17 United States will re-image the hard drive to remove all data from the hard drive. Neither the  
18 United States nor its agents will review the defense team's configurations on the defense hard  
19 drive at any time.

20 6. The defense team shall not make copies of and shall not remove any images or videos  
21 from the alleged contraband materials without further Court Order. This prohibition includes (1)  
22 printing images and images from videos onto paper and (2) duplicating images and videos in any  
23 digital format; (3) carrying images and videos off-site from the examination room; and (4)  
24 sending images and videos off-site electronically. Non-image files such as word processing files,  
25 emails, and other text files may be duplicated to the extent necessary to prepare the defense of  
26 this matter but only after the person duplicating the material has confirmed that the file does not  
27 contain any embedded image or video files. The defense team may remove printed notes and/or  
28 reports provided that the person seeking to remove the notes and/or reports has confirmed that

1 the notes and/or reports do not contain any embedded image or video files.

2 7. Prior to receiving access to the materials on any occasion, the defense team members  
3 involved in that examination shall sign a copy of this Certification to be filed with the Court  
4 acknowledging that:

- 5 a. S/he has reviewed the Order;
- 6 b. S/he understands the contents;
- 7 c. S/he will only access the defense hard drive for the purposes of preparing a  
8 defense;
- 9 d. S/he will not access the defense hard drive from any computer that is connected to  
10 the Internet or any local network;
- 11 e. S/he will not remove the defense hard drive or any alleged contraband materials  
12 from the examination room; and
- 13 f. S/he understands that failure to abide by this Order may result in sanctions by this  
14 Court and in state or federal criminal charges for possession, transportation,  
15 receipt, or distribution of child pornography.

16 8. Upon conclusion of any examination, the defense team members involved in that  
17 examination will certify in writing, to be filed with the Court, that s/he has not copied and has not  
18 removed the defense hard drive and/or any alleged contraband materials from the examination  
19 room. Except when a member of the defense team involved in that examination fails to provide  
20 this certification, no employee of the United States will examine or acquire in any fashion any of  
21 the items used by the defense team to conduct its analysis. If a member of the defense team fails  
22 to certify that s/he has not copied and has not removed any alleged contraband materials, the  
23 United States may inspect or examine the defense hard drive and any computer and computer  
24 media used by the defense team to ensure that contraband has not been removed.

25 9. In the event that the defense team inadvertently removes any alleged contraband  
26 materials, it shall immediately inform counsel for the United States and return it to him/her  
27 within 24 hours.

28 10. This Stipulated Order is a negotiated procedure by the parties in this case. It does not

1 constitute a concession or waiver by the United States regarding discovery procedures generally  
2 for providing access to child pornography under Title 18, United States Code, section 3509(m).  
3 It also does not represent a stipulation by the defense team conceding the constitutionality of  
4 Title 18, United States Code, section 3509(m). This Stipulated Order will permit the parties in  
5 the present case to avoid litigation regarding Title 18, United States Code, section 3509(m) but  
6 does not represent a waiver or concession in other or future cases.

7 11. A copy of this Stipulation and Interim Protective Order shall be maintained with the  
8 alleged contraband materials at all times.

9 12. Any disputes concerning this Stipulation and Interim Protective Order shall be resolved  
10 by this Court only after counsel for the United States and defendant have first conferred and  
11 attempted to resolve the dispute.

12

13 SO STIPULATED:

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JOSEPH P. RUSSONIELLO  
United States Attorney

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16 DATED: February 25, 2009

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18 DATED: February 14, 2009

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21 DATED: February 17, 2009

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23 SO ORDERED.

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25 DATED: March 2, 2009

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28

Denise M Barton  
DENISE MARIE BARTON  
Assistant United States Attorney

S. Schinkel  
EDWIN PRATHER  
CRAIG BESENTER  
Attorneys for Jeffrey David Schinkel

